IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 10813 of 1995

For Approval and Signature:

HON'BLE MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

JAGDISH UKHAVDE

Versus

PRAMUKH SWITCH GEARS

Appearance:

1. Special Civil Application No. 10813 of 1995

MR UT MISHRA for MR TR MISHRA for Petitioner No. 1

MR GM JOSHI for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE H.K.RATHOD

Date of decision: 25/08/2004

ORAL JUDGEMENT

#. Heard Mr.U.T.Mishra, learned counsel for the petitioner, and Mr.G.M.Joshi, learned counsel for the

respondent.

#. In the present petition, the petitioner has challenged the award passed by the Labour Court, Ahmedabad, in Reference (LCA) No.1175 of 1986 dated 13.9.1995. The Labour Court directed the contractor to pay Rs.5,000/= being legal dues of the workman within one month from the date of publication of award and in case payment is not made within this period, the respondent is directed to pay interest at the rate of 18% p.a. on the delayed payment. Cost of Rs.500/- has also been awarded.

#. Mr.U.T.Mishra, learned counsel for the petitioner submitted that the workman was an employee of principal employer and not the contractor and therefore, the Labour Court has committed gross error in coming to such conclusion. He also submitted that the Labour court has not properly appreciated the oral and documentary evidence and therefore, the Labour Court has committed gross error. He also submitted that the workman actually worked under the main employer and not under the contractor. Therefore, he challenged the award in question and submitted that the petitioner-workman is entitled to reinstatement with the main employer.

#. Mr.G.M.Joshi, learned counsel for the respondent, submits that before the Labour court, the contractor Mr.Ramchandra Mahadevan Pillai was ready and willing to employ the petitioner but the petitioner refused to join the duties with the contractor. He also submitted that the petitioner-workman was working with the contractor but in the presence card or in other document, if name of main company has been mentioned, that does not mean that there was relationship of employer and employee between respondent and petitioner. He also submitted that Mr.Pillai was examined vide ex.35 before the Labour Court and he in terms admitted that the workman was employed by him and he was ready and willing to employ the workman again but the workman-petitioner was not ready to resume duty with the contractor. Therefore, the Labour Court has rightly relied upon the evidence of Mr.Pillai and came to conclusion that workman was employed by contractor and not by respondent. Therefore, there is no error committed by the Labour Court while passing such award which requires any interference by this Court.

#. I have considered the rival submissions made by learned counsel for the parties. It is also necessary to make a mention here that, as pointed out by Mr.G.M.Joshi, learned counsel for the respondent, a cheque drawn on Ahmedabad Mercantile Cooperative Bank for amount of

Rs.5,500/= was sent by Mr.Pillai, the contractor to the Union and the same has been received by the Union on 7.11.1995. Before the Labour Court, statement of claim was filed by petitioner vide ex.3. The respondent filed reply vide ex.9 and in reply, contention was raised that the petitioner was not employed by respondent. Thereafter documentary evidence were produced by both the parties. Mr.Mehta/ Pillai and Parikh and petitioner-workman himself were examined. The Labour Court considered the oral as well as documentary evidence and came to conclusion that whatever receipts that were produced were relating to Santosh contractor and even signatures of the workman were on the receipts which had the seal of Santosh Contractor. After considering the oral as well as documentary evidence, the Labour Court came to conclusion that the workman was employed by the Contractor Mr.Pillai and inspite of the offer made by Mr.Pillai, the workman was not prepared to join the contractor and therefore just to find out solution of the dispute raised by petitioner, the Labour Court though it fit to grant lumpsum amount of Rs.5,000/= to the petitioner-workman. The Labour Court has observed that this amount is required to be paid by Mr.Pillai and in case he fails to pay this amount, then the same is required to be paid by respondent with interest at the rate of 18% per annum.

#. I have perused the award passed by the Labour Court. The facts have rightly been appreciated by the Labour Court. There is no error committed by the Labour Court and there is no infirmity pointed out by the learned advocate Mr.Mishra and therefore, according to my opinion, the Labour Court has not committed any error which requires any interference by this Court while exercising powers under Article 227 of the Constitution of India. Therefore, there is no substance in the present petition. Accordingly, it is dismissed. Rule is discharged. No order as to costs.

(H.K.RATHOD, J.)

(sunil)